IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR.

JUDGMENT

S.B.Civil Writ Petition No.2016/1996

Nathu Singh & Ors. vs. State of Rajasthan & anr.

Date : 7.9.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.V Bishnoi, for the petitioners.
Mrs.RR Kanwar, Dy.GA, for the respondents.

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BY THE COURT :

Heard learned counsel for the parties.

The proceeding under Section 91 of the Rajathan Land Revenue Act, 1956 (for short 'the Act of 1956') was initiated against the petitioners in the Court of Tehsildar, Abu Road who vide order dated 27.12.1991 held that the petitioner second time encroached upon the land, therefore, he is liable to be evicted from the land. The Tehsildar also held that the petitioners are liable to pay the penalty of Rs.200/-. In addition to the above, in view of second encroachment, the

Tehsildar, Abu Road passed the order of imprisonment for two months.

The order dated 27.12.1991 passed by the Tehsildar was challenged by the petitioners by preferring appeal before District Collector, Sirohi. The District Collector in virtual one para dismissed the appeal of the petitioners vide order dated 29.3.1994.

The petitioners preferred second appeal before the Land Settlement Officer cum Revenue Appellate Authority, Sirohi who vide order dated 28.3.1995 partly allowed the appeal of the petitioners and held that the relevant encroachment is not second encroachment and, therefore, set aside the order of penalty and imprisonment passed by the Tehsildar.

The petitioners preferred revision petition before the Board of Revenue. The Board of Revenue dismissed the petitioners' revision petition vide order dated 3.7.1995. However, while dismissing the revision petition of the petitioners, the Board of Revenue, it appears inadvertently observed that the appellate court dismissed the appeal of the petitioners even by which the imprisonment and penalty was challenged. In fact, that fact is not correct and the Revenue Appellate Authority already set aside the order of imprisonment and penalty passed against the petitioners. The petitioners challenged the order of Board of Revenue by filing the revision petition which was dismissed vide

order dated 26.12.1995 on admission stage. Hence, this writ petition.

According to learned counsel for the petitioners, without admitting even if the petitioners are trespassers, then the petitioners were entitled to be considered for regularisation of their possession over the land in dispute in view of the Government's own orders passed on 1.4.1991 which provides for regularisation of encroachment over the Government land. By this notification dated 1.4.1991, the Government decided to regularise all the encroachments made by the persons on a government agriculture land upto 15.7.1984. Learned counsel for the petitioners pointed out that thereafter in the year 2001, the State Government issued another order being No.P.6(7) Raj/4/77/15 dated 16.10.2001 by which encroachments made upto 15.7.1994 have been ordered to be regularised.

Learned counsel for the petitioners submitted that the petitioners are in possession of the land in question and the petitioners' dispossession has been stayed by this Court in this writ petition vide order dated 4.7.1996.

In view of the above reasons, the case of the petitioners was not considered for regularisation of his possession. Learned counsel for the petitioners

submits that the petitioners are ready to follow all procedure for regularisation of his land.

I considered the submissions of learned counsel for the parties and perused the facts of the case.

So far as the petitioners' possession is concerned, that finding of fact has been reocrded by three courts below that their possession was illegal, therefore, the petitioners encroached upon the government land is a proved fact but so far as the petitioners' prayer for consideration of their case for regularisation of the land under the Government's decision is a just prayer of the petitioners because of the reasons that the notification has been issued by the State Government for regularisation of illegal possession and, therefore, the petitioners' illegal possession is required to be considered because of the reasons that the petitioners possession is old one. One additional fact is that by now more than 16 years have passed to the order passed by the Tehsildar dated 27.12.1991. Therefore also, in case the petitioners are found to be entitled to any relief, then that is to be considered by the competent authority under the law.

In view of the above, this writ petition is allowed with a direction to the respondent State and

its competent authority to consider the case of the petitioners for regularisation in accordance with the Rules and in accordance with the State Government's circulars. In case, the petitioners are found to be eligible for regularisation may be on conditions, then the land in question may be regularised on such conditions.

The petitioners may approach the District Collector, Sirohi with their prayer in writing with the copy of this order so that it may be decided by the District Collector or the competent authority to whom the District Collector may send the matter for consideration of the regularisation of the encroachment of the petitioners. The petitioners shall submit the said application by 1.10.2007 and the learned District Collector or any competent authority may decide the petitioners' case within a period of six months thereafter.

Till then the petitioners shall not be evicted from the land in question.

(PRAKASH TATIA), J.

S.Phophaliya